IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4212 OF 2005

Shekhar Keshav Yadav).. Petitioner

Versus

Baban Baliram Kalal and others).. Respondents

Mr.A.K.Jalisatgi with Mr.Amol Desai for the Petitioner.

Mr.Y.M.Pendse for Respondent Nos.1 to 3 and 7.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 14TH JULY 2005

P.C.:

. The Petitioner has challenged the order passed by the Industrial Court, Thane on 13th April 2005 below Exhibit U-19 in Application (ICTU) 1 of 2005 directing holding of fresh elections for the post of President of the Shahid Marutirao Jadhav Rickshaw Chalak Malak Union.

2. According to the Petitioner, he is elected as the President of the Union on 9th January 2005. None of the Respondents contested this post and in fact were opposing any elections being held. The other office bearers were also elected. The Respondents challenged the elections and obtained a consent certificate from the Registrar of Trade Union to file a dispute before the Industrial Court. An application was filed under Section 28-1A of

the Trade Unions Act by the Respondent contending that the election of the office bearers of the Trade Union was not validly held. It appears that both the parties had initially consented on 8th March 2005 that fresh elections for the post of President and the Executive body should be held. The Industrial Court had on the basis of this purshis filed by both the parties, directed the parties by an order dated 2nd April 2005 to deposit an amount so that elections could be held early by appointing Mr.L.P. Vishe as the Election Officer. As neither party was able to deposit this amount in Court, no elections were held. A fresh application was made by the Respondent for modification of the earlier order. The Respondent contended that elections only for the post of President should be held and that the Respondents were ready to deposit the amount as directed by the Court. The Opponent i.e. the Petitioners herein opposed the application withdrew their consent since they claimed to be validly elected members and therefore there was no question of holding fresh elections during the pendency of the Complaint. The Industrial Court by the impugned order has directed that elections only for the post of President be held as an interim arrangement. The entire programme has also been specified in the order.

3. In my view, the Industrial Court could not, as an interim measure, grant the application or direct holding

of elections since the main application itself was for deciding whether the elections of the Petitioners was valid. The consent given on 8th March 2005 has been withdrawn by the Petitioners. The elections were held for the entire body and not just for the post of President. In my view, the Industrial Court would not have jurisdiction to pass such an order as an interim measure. Section 28-1A which stipulates the power of the Industrial Court is explicit. The proviso to Section 28-1A(2) permits the Industrial Court to make an interim order specifying or appointing any person or appointing a Committee of Administration for any purpose under the Act including the purpose of taking possession or control of the property in dispute and managing it for the purposes of the Union, pending the decision of the dispute. The Industrial Court could not therefore have made any order directing holding of elections when the relief claimed in the main application itself was for setting aside the election of the Petitioner.

4. The impugned order of the Industrial Court set aside. Writ Petition allowed.